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PRISON OVERCROWDING AND ALTERNATIVES TO DETENTION

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Monitoring and updating of the Research Project

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The overall goal of the project is to promote the development and the implementation of alternatives to detention at a EU level, in order to reduce the disproportionate resort to incarceration by legislators and judicial authorities.

The abuse of custodial measures first of all determines prison overcrowding across Europe, that violates fundamental rights of individuals and compromises the mutual trust necessary to underpin judicial cooperation in Europe. What is more, incarceration proves to be dysfunctional both to the rehabilitation of the offenders and to the prevention of recidivism.

Therefore, the project activities are directed to criminal justice operators and policy-makers with the objective of improving their ability to appropriately implement the alternative strategies to detention.

To this end, the project aims to provide criminal justice operators and policy-makers with a strong comparative knowledge of alternatives to detention existing in other Member States.

A series of training meetings addressed to legal practitioners and other professionals is organised by both the coordinator organisation and the partners. In order to organise the meetings, a preliminary study of legal provisions in force in the selected Member States will be carried out. Drawing on this legal analysis, the researchers will then assess the efficiency of a selected number of alternative measures, identifying the best practices and the problems to solve.

Additionally, the project will propose a set of guidelines on the alternatives to detention. The purpose of these guidelines is twofold. On the one hand, they aim to promote the adoption and the implementation of alternatives to incarceration in accordance with Council of Europe standards and rules.

On the other hand, they intend to encourage the circulation of best practices on a European level with the aim of fostering mutual recognition and mutual trust in cross-border judicial cooperation.

The focus will not only be limited to analysing the alternatives to detention in the sentencing phase, but will also envisage strategies to avoid incarceration before the trial, as required by the EU Council Roadmap on procedural rights of suspected or accused persons.

The research action will be focused upon Belgium, France, Italy, Romania and Spain, and it is intended to obtain scientific results which may also be useful and effective in other Member States. For this reason, a combined methodology is employed in order to maximise the validity of the results.

The activities include:

- a comparative study of legal provisions on alternative to detentions in the selected Member States;
- the elaboration of a questionnaire to collect practical data on the implementation of alternatives to detention according to scientific standards;
- three meetings among researchers and law practitioners in order to verify existing good practices and to raise awareness on the advantages of alternatives to detention;
- an integral analysis of legal and empirical findings;
- the practical guidelines and legislative proposal on the alternatives to detention in the EU;
- a two days international congress, to discuss and disseminate the results of the project;

This is the second of a series of booklet that will be published during the two years of research, in order to frequently update the operators about the development and activities of the project.

INDEX

Summary of The Activities Carried Out During The First Year Of The Project	4
Summary of The Conference Held in Brussels 2015	5
News from the Project: forthcoming publication of the handbook	8

SUMMARY OF THE ACTIVITIES CARRIED OUT

DURING THE FIRST YEAR OF THE PROJECT

During the first year the research has achieved some major goals. In the first semester (May-November) an in-depth analysis of the factors contributing to prison overcrowding and prison population inflation was carried out. Data concerning prison rates and prison capacity have been gathered, showing significant discrepancies between the selected Member States.

At the first sight, the outcomes of such examination might even appear paradoxical: according to the national data and CoE-Space I 2013 survey, for instance, prison population in Italy in 2012 exceeded by the 48% prison capacity, being the worst among the penitentiary systems scrutinized.

In striking contrast to its prison density, however, Italy revealed the lowest incarceration rate per capita among the selected Member States. Poland on the other hand had the highest incarceration rate among the selected systems but was the only one in which prison overcrowding was not detected. During the second semester of the research (December-May) national units have indeed focused on information and statistics concerning alternative sanctions and measures. Encompassing the instruments applicable, respectively, to the pre-sentencing, sentencing and post-sentencing phase, the analysis drew attention to the existence of a wide array of sanctions and measures available to prosecutors and judges in the selected Member States.

Statistical data again showed that an increase in the use of alternatives to detention does not correspond to a decrease of the prison population rate. Surveys indeed demonstrated that in some Member States an augmentation of prison population can be noticed despite the increasing recourse to sanctions and measures executed in the community, raising questions on the risk that a process of "net-widening" may take place. This shows how the mere correlation of data may not be sufficient to assess the real

impact of non custodial sanctions and measures on prison conditions. This is why, in the last working group held in Cluj-Napoca, consensus has emerged around the idea that the time has come to depart from a simple analysis of data and address a principle-based evaluation of alternative sanctions and measures as they operate in practice. It is essential to take into account the limits which might reduce or hinder the recourse to or the impact of non custodial sanctions, by analysing in depth both their legal basis and enforcement in practice.

This methodology will enable the researchers to point out, among other things, the shortcomings hampering the effective implementation of alternative measures, the counter-productive effects of their malfunctioning and the risks triggered by a lack of assistance, supervision and control in the execution of the latter.

A valuable benchmark to carry out such evaluation are the standards set out in the Recommendations enacted by the Parliamentary Assembly of the Council of Europe, drafted by the European Committee on Crime Problems (CDPC), the Council for the Penological Cooperation (CP-PC) and other ad hoc working groups of experts. Such a methodology will also help disseminating appropriate information to the public on the functioning of alternative sanctions and measures and lay down the basis for the elaboration of a set of guidelines at a EU level. European Committee on Crime Problems. An in-depth evaluation of European soft law in the field of alternative sanctions is essential to build common standards that will ease the functioning of instruments of judicial cooperation in this field, such as the Framework Decision on probation and alternative sanctions whose effectiveness may be threatened by the differences between the various national systems of probation and by a lack of mutual trust among practitioners.

What follows is a first partial summary of the Conference held in Cluj-Napoca, where some of the above mentioned issues were deeply discusses. Please note that other important contributions on the topics discussed during the Conference will be uploaded on our website. The research project is now entered

its third phase. Ideally the guidelines resulting from this part of the research will consist in a series of research-based recommendations aimed at enhancing a wider and safer recourse to non custodial sanctions and measures in the EU.

SUMMARY OF THE CONFERENCE HELD IN BRUSSELS, ON OCTOBER 22ND 2015

On 22 October 2015 the University Saint-Louis of Brussels in collaboration with the University of Ferrara, hosted the international conference “*Surpopulation carcérale et alternatives à la détention: Quelles orientations en Europe?*”. The conference was intended as a general public presentation of the results collected during the third of the four semesters of the project and also as an opportunity for the different research units to fine-tune the project for the forthcoming handbook on prison overcrowding and the alternatives to detention. The meeting also allowed the research units to publically engage with a first evaluation of the empirical and legal findings collected during the research.

The opening session – chaired by Sébastien Van Drooghenbroeck, Dean of Law school of the University Saint-Louis of Brussels and by Alessandro Bernardi, Full Professor in Criminal law at the University of Ferrara and coordinator of the project – offered an overview on the project and its results thus far. Immediately after, in the first session of the meeting chaired by Professor Julie Alix Professor in Criminal law at the University of Lille, the focus was placed on the supranational legal sources dealing with the alternatives to detention. The first speakers were Christine Guillain and Thibaut Slingeneyer from the University Saint-Louis of Brussels whose presentation focused on the “*legal instruments of the Council of Europe*” in this field. The “*case law of the European Court of human rights*” was subsequently investigated by Maria Lombardi Stocchetti of the University of Milan.

The second session was devoted to the legal framework set by European Union law was chaired and introduced by Professor Florin Streteanu, full Professor in Criminal law and coordinator of the research unit of the University Babe-Boylai of Cluj-Napoca. First, Daniel Nitu of the University Babe-Boylai of Cluj-Napoca gave a presentation on the legal instruments of the European Union dealing with detention issues and alternatives to imprisonment. Then, Marta Muñoz de Morales Romero (Post-doc researcher and member of the research unit of the University of Castilla La Mancha) concentrated on the most relevant issues emerging from the recent “*case law of the Court of Justice of the European Union*”, providing useful insights on the recent cases *Lanigan*, *Aranyosi*, and *Onyagnov*.

The third session took place in afternoon, with a focus on the challenges of a European harmonisation of non custodial sanctions and measures. The first presentation was given by Adriano Martufi member of the research unit of the University of Ferrara who spoke of the “*general principles applicable to non custodial sanctions and measures*” and the issues raised by their practical implementation in the national legal system. Professor Yves Cartuyvels, coordinator of the research unit of the the University Saint-Louis of Brussels concluded the seminar with a presentation on the “*criminological implications of an harmonisation of non custodial sanctions and measures*”.

NEWS FROM THE PROJECT

FORTHCOMING PUBLICATION OF THE HANDBOOK

We are glad to inform that the core project team has recently signed an agreement with one of the most renowned academic publisher in humanities and social sciences: Routledge (which is an imprint of the Taylor and Francis Group). The agreement concerns the publication of a book provisionally titled “Routledge Handbook on Prison Overcrowding and Alternatives to Detention”. The book in question will incorporate the materials produced by all the members of the various research units during the project. The agreement establishes that the book will be published no later than eighteen months after full delivery of accepted work from the Editor. According to the above mentioned agreement, the Editor of the handbook will be Professor Alessandro Bernardi, a renowned expert in European Criminal Law having published a considerable number of studies, articles and books on Comparative Criminal Law and harmonisation of legislations and sanctions in Europe in several languages.

According to the agreement, the handbook will be published also in electronic format, and if the Publishers consider that a new edition of the book is needed, the latter will be reprinted.

We strongly believe that publication we propose stands out for:

- its subject (consisting in a detailed analysis of non-custodial sanctions in six Countries) and its method (horizontal comparison and vertical evaluation of compliance with supranational standards);
- the choice of the selected Countries which is complementary to other research projects on the same topic;
- its interdisciplinary approach, merging legal comparative analysis with a review of the most recent empirical surveys on non-custodial sanctions and measures (see concluding commentaries by the editors)